

Appl. No. 10/637,221
Reply to Office Action of June 24, 2009
Amendment Dated September 22, 2009

REMARKS

Claims 1-46 and 48-53 stand rejected. Claim 47 was previously cancelled.

Claims 1, 28, 41, 46 and 53 have been amended herein. Therefore, claims 1-46 and 48-53 are pending and at issue.

Claims 1 and 46 stand objected to regarding the alleged omission of the term "adapted." Applicants have amended claims 1 and 46 as suggested by the Examiner and therefore, this objection should be withdrawn.

The drawings stand objected to as allegedly failing to show "the top planar envelope" as recited in claim 41. Further, the Office Action alleges that the scan envelope 39 is not depicted in the drawings. Applicants would like to direct the Examiner's attention to Figure 5 where envelope 39 is clearly depicted. Therefore, the drawings show every feature specified in the claims such that this objection should be withdrawn.

Claims 1, 2, 6, 7, 9, 10, 17-20, 21, 24-38, 41-46 and 49-53 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carr. This rejection should be withdrawn as Carr fails to disclose one or more features recited in the claims as previously presented and/or as currently amended.

Independent claim 1 recites a microwave assembly for receiving reflected microwave energy from the breast under examination. Carr simply fails to disclose or suggest this feature, and, in fact, is directed to an entirely different form of technology, thermoradiation. Thermoradiation is generally directed to detecting changes in temperature caused by the heating of the tissue which results from the absorption of

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microwave energy. The present claims, on the other hand detect the reflected microwave energy and not the temperature of tissue that absorbs microwave energy.

Furthermore, the apparatus used for these technologies is oftentimes very different. For example, in thermoradiation, the power source is generally very small, the signal tends to be incoherent random noise and the source is generally weak black body radiation. Systems and methods that receive reflected microwave radiation, on the other hand, generally have much larger power sources, use predictable signals, such as for specific frequencies, power and duration. Moreover, the type of data received, as well as how the data is processed in these technologies, is very different. Therefore, as Carr fails to disclose or suggest one or more features recited in independent claim 1, this rejection should be withdrawn and the claim allowed.

These difference further highlight that Carr cannot be modified as proposed by the Office Action. The Office Action alleges that it is known to position patients in a number of positions, such as in the prone position, and that Carr could be so modified. Applicants respectfully disagree with this alleged modification of Carr. As Carr is directed to thermoradiation and temperature sensing, it is important to prevent disturbing the breast surface temperature distribution. If the patient were positioned in a prone position, as alleged by the Office Action, the patient's breast would be compressed and the temperature distribution would be affected, potentially causing inaccurate results. Furthermore, in a prone position, an additional layer would be required to support the breast and would therefore create an additional change in the temperature profile and the temperature measured. Therefore, Carr requires that the

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patient be positioned in the supine position, contrary to the present claims and contrary to the modification proposed by the Office Action.

Additionally, in Carr, it is quite important for the operator to be able to easily and comfortably move the temperature sensing instrument along the patient's body. Therefore, it is quite necessary for the patient to be positioned in a supine position so the temperature sensor can be manipulated and so that the operator can be located above the patient. If Carr were modified as proposed by the Office Action, it would be rendered unsuitable for its intended purpose. In the prone position, the operator would not be able to manipulate the temperature sensor as required by the technology disclosed in Carr. Thus, this proposed modification of Carr is improper. For this additional reason, the rejection should be withdrawn and the claim allowed.

The remaining independent claims recite similar features as those discussed above with respect to claim 1. For example, claim 28 recites receiving reflected microwave energy, claim 41 recites generating a 3-D scan image using reflected microwave energy, and claim 46 recites a scan system for receiving reflected microwave energy. Therefore, for similar reasons to those presented above, the rejection should be withdrawn and the claims allowed.

Additionally, claim 41 recites, amongst other steps, generating a 3D generated scan image of an organ, the scan image having a top planar envelope, generating a photo image of the imprint having the sized field of view and overlaying the photo image on the top planar envelope. Carr fails to disclose or suggest any photo or other optical

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imaging. Therefore, as Carr fails to disclose or suggest the method of claim 41, this rejection should be withdrawn.

Claims 3-5, 8, 21 and 22 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carr in view of Meaney. This rejection should be withdrawn as Carr and Meaney, when each taken alone or in combination, fails to disclose or suggest one or more recited features in the claims. As acknowledged by the Office Action and its withdrawal of the previous rejection, the combination of Carr and Meaney is improper and fails to disclose or suggest one or more features recited in the claims. Specifically, the present Office Action states that "Applicant's arguments have been fully considered and are persuasive; therefore the rejection under 35 U.S.C. § 103(a) over Carr in view of Meaney '943 is withdrawn." Therefore, this rejection should also be withdrawn.

Claims 11, 12, 13-16 and 39-40 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carr in view of Haddad. This rejection should be withdrawn. As discussed above, Carr fails to disclose or suggest one or more features recited in claims 1 and 28. Haddad adds nothing in regards to these deficiencies. Therefore, as claims 11, 12, 13-16 and 39-40 depend from either claim 1 or claim 28, the rejection should be withdrawn and the claims allowed.

Claims 23 and 48 stand rejected under 35 U.S.C. § 103(a) over Carr in view of Horton. These claims depend on independent claims 1 and 46. As discussed above, Carr fails to disclose or suggest one or more features recited in these independent claims. Horton adds nothing regarding these deficiencies. Therefore, for similar reasons, this rejection should be withdrawn and the claims allowed.

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Applicants respectfully request entry of the present amendment, reconsideration of the rejection of claims 1-46 and 48-53 and allowance of the case. The Patent Office is authorized to deduct any fees from Deposit Account No. 19-1351 to cover any additional fees. If such a withdrawal is made, please indicate the attorney docket number (33281-400290) on the account statement.

Applicants believe the present amendment places the application in condition for allowance. However, if the Examiner determines that the application is not yet allowable, Applicants request the Examiner contact the undersigned attorney.

Respectfully submitted,

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